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IN THE

Supreme Court of the United States

FORD MOTOR COMPANY AND
CITIBANK (SOUTH DAKOTA), N.A.,

Petitioners,

v.

JOHN B. MCCAULEY *et al.*,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a class-action lawsuit that seeks programmatic injunctive relief on behalf of a putative nationwide class may be heard in federal court, when the parties are completely diverse and the relief sought by the plaintiffs would cost the defendants more than $75,000.

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BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE*

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit association with 122 corporate members representing a broad cross-section of American and international product manufacturers. These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (non-voting) members of PLAC. Since 1983 PLAC has filed over 575 briefs as *amicus curiae* in both state and federal courts, including this Court, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product liability. A list of PLAC's corporate members is attached as the Appendix.[1]

PLAC's members have a significant interest in the rules that govern class actions. Many of PLAC's members are frequently named as defendants in class-action lawsuits that seek injunctive relief on a nationwide basis, as is the case here. Consequently, PLAC's members have a substantial interest in whether and when federal jurisdiction may extend to such claims.

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[1] Pursuant to this Court's Rule 37.3(a), letters of consent from all parties to the filing of this brief have been filed with the Clerk. Pursuant to Rule 37.6, PLAC states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than PLAC, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

STATEMENT

This dispute arises from a decision by Ford Motor Company and Citibank to terminate their nationwide credit card rebate program. The plaintiffs, who purport to sue on behalf of a class of six million consumers throughout the Nation, seek an injunction reinstating the program on a national level. It is undisputed that the cost of reinstatement—for either a single class member or the entire class—would vastly exceed $75,000. The question presented is whether this cost satisfies the amount-in-controversy requirement of the diversity statute, 28 U.S.C. § 1332(a).

SUMMARY OF ARGUMENT

This case belongs in federal court. Indeed, it is the paradigmatic diversity case because it is thoroughly interstate in nature—the parties are completely diverse and the plaintiffs seek programmatic injunctive relief that runs nationally—and because the amount in controversy is easily of sufficient magnitude. The Ninth Circuit's decision to ignore the "fixed legal costs of compliance" that Ford and Citibank would incur were an injunction to issue is legally baseless. Such a rule clashes with the language and purpose of § 1332(a) and defies logic. It would lead to nonsensical results in class actions where, for example, the plaintiffs request that the defendant fund a nationwide corrective advertising campaign or undertake a massive environmental cleanup.

The Ninth Circuit's ruling, if affirmed, risks permitting a small group of state-court judges, handpicked by the plaintiffs' class-action bar, to dictate national policy on subjects ranging from insurance law to environmental regulation to automobile and pharmaceutical safety standards. Such a result is inconsistent with basic principles of federalism, which prohibit a single state-court judge from issuing rulings that displace the laws and policy judgments of other States and effectively legislate on a national level. This Court has long defended state autonomy by rigorously enforcing the constitutional limits on one State's ability to regulate beyond its

borders. *See, e.g., Healy v. The Beer Institute*, 491 U.S. 324 (1989); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

Permitting federal jurisdiction over the type of class-action claim presented here—where a plaintiff class seeks a programmatic nationwide injunction—is a sensible policy result that is in harmony with principles of diversity jurisdiction and federal class-action rules. Plaintiffs' class-action lawyers are increasingly filing duplicative "cut-and-paste" lawsuits in multiple courts simultaneously, hoping to find the one judge who will certify a nationwide class. The federal court system, which can transfer and consolidate such cases if necessary, *see* 28 U.S.C. § 1407, is well suited to handle this small but significant subset of class actions. Federal courts are also better suited than state courts to determine if class, rather than individual, treatment of particular cases is appropriate.

ARGUMENT

Plaintiffs seek an order compelling Ford and Citibank to reinstate their terminated credit card rebate program on a nationwide basis—a remedy that would cost Ford and Citibank well over $75,000. The complete diversity of the parties, the clear interstate nature of the relief requested, and the sheer magnitude of the cost that would be imposed on the two out-of-state defendants, plainly suffice to confer jurisdiction on a federal court.

I. THIS TYPE OF CLASS ACTION IS THE PARADIGMATIC DIVERSITY CASE

The diversity statute, 28 U.S.C. § 1332(a), reflects Congress's intent to provide a federal forum for disputes of sufficient magnitude between citizens of different States. Here, there is no dispute that the parties are completely diverse. Pet. App. 6a. Indeed, a local plaintiff haling into state court two large, out-of-state corporations raises the potential for the very type of "hometown" bias that diversity jurisdiction was intended to prevent. *See Barrow S.S. Co. v. Kane*, 170

U.S. 100, 111 (1898) ("The object of the [diversity jurisdiction] provisions . . . conferring upon the [federal] courts . . . jurisdiction [over] controversies between citizens of different States of the Union . . . was to secure a tribunal presumed to be more impartial than a court of the State in which one of the litigants resides.").

The courts below, however, refused to exercise jurisdiction because they concluded that the statute's amount-in-controversy requirement had not been satisfied. That conclusion is incorrect: A class-action lawsuit seeking relief of this magnitude easily surpasses the threshold set by Congress, and is precisely the sort of large case with an out-of-state defendant and nationwide implications that Congress envisioned would be heard in the federal courts.

Article III, Section 2 of the United States Constitution provides that "[t]he judicial Power shall extend to . . . Controversies . . . between Citizens of different States," and Congress has provided for diversity jurisdiction since the Judiciary Act of 1789, 1 Stat. 78. The requisite amount in controversy, originally set at $500, has increased over time to its current level of $75,000. 28 U.S.C. § 1332(a). In adjusting this amount, Congress has recognized that "[t]he jurisdictional amount should not be so high as to convert the Federal Courts into courts of big business nor so low as to fritter away their time in the trial of petty controversies." S. Rep. No. 85-1830, at 3-4 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099-3101; H.R. Rep. No. 85-1706, at 3 (1958).

The Ninth Circuit held that even if the cost of an injunction running in favor of a single plaintiff exceeded $75,000 (a fact that is undisputed in this case), federal jurisdiction would still not exist because the amount-in-controversy requirement "cannot be satisfied by showing that the fixed administrative costs of compliance exceed $75,000." Pet. App. 12a. Taking such costs into account, the court reasoned, would be "fundamentally violative of the principle underlying the jurisdictional amount requirement—to keep small diversity suits out of federal court." *Id.* The court concluded that "[i]f the argument were accepted, and the administrative costs of complying with an injunction were permitted to count as the amount in controversy, then every case, however trivial, against a large corporation would cross the threshold" of federal jurisdiction. *Id.* (citation omitted).

As an initial matter, the Ninth Circuit's suggestion that this case is nothing more than a "small diversity suit" is plainly incorrect. Indeed, the court itself never disputed the fact that reinstating the rebate program, for even a single plaintiff, would cost Ford and Citibank vastly more than $75,000. Particularly in light of the well-settled rule that "[i]t must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal," *Saint Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938), it is manifest error to decline jurisdiction where, as here, it appears "to a legal certainty" that the claim is for far *more* than the jurisdictional amount.

The Ninth Circuit's reasoning threatens to bar from federal court a relatively small but significant group of class-action lawsuits: those in which the *fixed* cost of complying with an injunction exceeds the jurisdictional amount, but the *marginal* cost of providing relief to an individual class member falls under the $75,000 threshold. For example, the Ninth Circuit's rule would likely preclude federal jurisdiction in cases where a class of plaintiffs requests a nationwide corrective advertising campaign or demands that a manufacturer conduct an environmental cleanup. *See, e.g.*, *Tylka v. Gerber Prods. Co.*, 211 F.3d 445 (7th Cir. 2000) (seeking injunction ordering baby food manufacturer to conduct advertising campaign to correct alleged misrepresentations about food's nutritional value); *O'Connor v. Boeing North American, Inc.*, 197 F.R.D. 404 (C.D. Cal. 2000) (seeking injunction requiring defendant to clean up alleged contamination). Even though a defendant could be required to pay millions of dollars to fund the advertising campaign or the cleanup, the Ninth Circuit's rule would force it to litigate the claim in state court on the grounds that such significant costs were simply the "fixed administrative costs of compliance."

An equally absurd outcome would result were a plaintiff class to seek an injunction directing the defendant to make major changes to its business operations. *See, e.g.*, *In re Visa Check/Mastermoney Antitrust Litig.*, 192 F.R.D. 68, 73 (E.D.N.Y. 2000) (seeking injunction barring defendant credit card companies from requiring stores that accept defendants' credit cards to accept defendants' debit cards as well); *Colorado Cross-Disability Coalition v. Taco Bell Corp.*, 184 F.R.D. 354, 356 (D. Colo. 1999) (seeking injunction compelling redesign of restaurants); *Popovich v. McDonald's Corp.*, 189 F. Supp. 2d 772, 774 (N.D. Ill. 2002) (seeking injunction requiring defendant to "complete [its] Pick Your Price" game allegedly compromised by fraud); *America Online, Inc. v. Superior Court*, 90 Cal. App. 4th 1, 5-6 (Cal. Ct. App. 2001) (seeking injunction forcing defendant to halt challenged billing practices). *Cf. Lucero v. Detroit Pub. Schs.*, 160 F. Supp. 2d 767, 767 (E.D. Mich. 2001) (seeking injunction barring opening of new elementary school); *Bacon v. Honda of America Mfg., Inc.*, 205 F.R.D. 466, 468-69 (S.D. Ohio 2001) (seeking injunction compelling employer to conduct sensitivity training). In each instance, the fixed cost to the defendant would be immense, whereas the marginal cost of providing relief to an additional plaintiff would be zero. Yet the Ninth Circuit's approach would ignore the undeniably large amount in controversy in such cases on the basis of its artificial distinction between marginal costs and fixed administrative costs of compliance.

An additional flaw in the Ninth Circuit's rule is that it presumably only applies in the class-action context. If a *single* plaintiff were to sue, seeking to force the defendant to clean up a hazardous waste site, the Ninth Circuit would apply the "either viewpoint" rule under *Ridder Bros. Inc. v. Blethen*, 142 F.2d 395, 399 (9th Cir. 1944), and deem the amount-in-controversy requirement satisfied. But if that single plaintiff were suddenly joined by an entire *class*—thus magnifying the case's significance exponentially—the Ninth Circuit would characterize the cleanup expenses as the "fixed

cost of compliance" and divest the federal court of jurisdiction.[2]

California law provides a good example. Under California's "private attorney general" statute, a consumer can file an action seeking injunctive relief on behalf of the citizens of California. *See* CAL. BUS. & PROF. CODE § 17200 *et seq.*; *see also, e.g.*, *Kasky v. Nike, Inc.*, No. S087859, 2002 WL 827173 (Cal. May 2, 2002) (§ 17200 action seeking injunctive relief, including a "Court-approved public information campaign" to correct allegedly false advertising). If the defendant was not a California resident, and if complying with the requested injunction would impose more than $75,000 in fixed costs, diversity jurisdiction would presumably exist. But if the same plaintiff filed the same lawsuit seeking the same relief on behalf of a nationwide class, the Ninth Circuit's rule would *prohibit* federal jurisdiction.

From the defendant's perspective, of course, there is little difference whether a cost is characterized as "fixed" or "marginal." In this case, for example, Ford and Citibank would be forced to resurrect the business apparatus for tracking cardholders' accrual of rebates; they would also have to maintain the computer systems necessary to verify which purchases qualify for rebate accrual; and they would have to pay the salaries of the employees running the program. Pet. 17. Contrary to the Ninth Circuit's suggestion that this is nothing more than a "small diversity suit" properly excluded from federal court, Pet. App. 12a, this case—and others like it—have enormous financial consequences for the defendants. Barring such cases from federal court on the basis of a legally insignificant distinction concerning whether a cost is fixed or marginal directly undercuts the purpose of diversity

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[2] Such a result is inconsistent with the Federal Rules themselves. *See* FED. R. CIV. P. 82 (providing that Federal Rules may not be construed to limit federal jurisdiction); *Snyder v. Harris*, 394 U.S. 332, 341 (1969) ("[T]he Congress that permitted the Federal Rules to go into effect was assured before doing so that none of the Rules would either expand or contract the jurisdiction of federal courts.").

jurisdiction, which is to provide a federal forum to out-of-state defendants in cases of reasonable magnitude.

II. THE CONSTITUTIONAL PRINCIPLES THAT BAR STATE COURTS FROM DICTATING NATIONAL POLICY SUPPORT RECOGNITION OF FEDERAL JURISDICTION

Plaintiffs seek nationwide injunctive relief on behalf of a putative nationwide class of cardholders. If this case is barred from federal court, then a single state court will be asked to make a determination that the defendants' conduct was unlawful *on a national basis*, and to order a remedy of programmatic injunctive relief to be implemented nationwide. This threatens basic principles of federalism. Such a directive could result in a single state court establishing public policy on a national level, and quite possibly overriding the laws of the 49 other States in the process. The Commerce Clause and the Due Process Clause prohibit States from seeking to regulate conduct in other jurisdictions, particularly in a way that would interfere with the policy choices of other States. This constitutional mandate applies regardless of whether the State seeks to regulate extraterritorial conduct through legislation or, as here, through judicial fiat. A federal forum is necessary to minimize the risk that a state court will determine national policy by projecting its law into other States.

It is well settled that "[n]o State can legislate except with reference to its own jurisdiction. . . . Each State is independent of all the others in this particular." *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881). The Commerce Clause thus acts as "a limitation upon the power of the States," *Freeman v. Hewit*, 329 U.S. 249, 252 (1946), and "'precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.'" *Healy v. The Beer Institute*, 491 U.S. 324, 336 (1989) (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 642-43 (1982)).

This Court has long defended state autonomy by rejecting efforts by one State to interfere with the policy choices of other States. In *Healy*, this Court underscored "the Constitution's special concern both with the maintenance of a national economic union unfettered by state-imposed limitations on interstate commerce and with the autonomy of the individual States within their respective spheres." 491 U.S. at 335-36 (footnotes omitted). The Court then struck down a Connecticut statute that controlled commercial conduct in other States, emphasizing that the Commerce Clause bars "the projection of one state regulatory regime into the jurisdiction of another State." *Id.* at 337. Likewise, in *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 584 (1986), the Court barred New York's effort to "project[ ] its legislation into other States, and directly regulate[ ] commerce therein" (citation omitted). Indeed, the Court emphasized that when a state statute "directly regulates" commerce in other States, the Court has "generally struck down the statute without further inquiry." *Id.* at 579.

In *BMW of North America v. Gore*, 517 U.S. 559 (1996), the Court relied on *Healy* in recognizing that the Due Process Clause imposes similar limits on a State's ability to regulate conduct in other jurisdictions. In enforcing the constitutional limits on Alabama's ability to impose punitive damages based on the defendant's conduct in other States, the Court explained that no State can "impose its own policy choice on neighboring States." *Id.* at 571. Indeed, "one State's power to impose burdens on the interstate market . . . is not only subordinate to the federal power over interstate commerce, . . . but is also constrained by the need to respect the interests of other States." *Id.* The Court concluded that a State "may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States," because such punishment would impermissibly and unconstitutionally interfere with the policy choices of those States by supplanting their own laws and regulations.

That, of course, is the precise danger posed by this case. The Constitution prohibits a state court from regulating on a

national scale, thereby running roughshod over the laws of the other States and imposing its policy choice on the entire Nation. Yet that is the likely result were a state court to issue a nationwide programmatic injunction in this case.

The danger is not speculative. In *Avery v. State Farm Mutual Automobile Insurance Co.*, 746 N.E.2d 1242, 1247 (Ill. App. Ct. 2001), a nationwide class of plaintiffs alleged that State Farm breached its contracts with its insureds by refusing to pay for original equipment manufacturer (OEM) parts, and using less expensive, non-OEM parts instead. An Illinois county court certified a nationwide class and the jury imposed a $1.18 billion award. *Id.* A court of appeals upheld the award, rejecting evidence from "[f]ormer and current representatives of state insurance commissioners [who] testified that the laws in many of our sister states permit and in some cases encourage the use of non-OEM parts as an effort to encourage competitive price control." *Id.* at 1254. The court reasoned that the laws of the other States were irrelevant because the county court had deemed the replacement parts "inferior." *Id.*

The *Avery* case triggered a media firestorm because the Illinois court had essentially overruled the laws of other States, many of which had reached a carefully considered policy judgment that insurers should be allowed—and in some cases *encouraged*—to use cheaper non-OEM parts in making repairs to motor vehicles as a means of controlling the cost, and broadening the availability, of insurance coverage. According to a contemporaneous report in *The New York Times*, the result of the Illinois decision was to "overturn insurance regulations or state laws in New York, Massachusetts, and Hawaii, among other places," and "to make what amounts to a national rule on insurance." *See* Matthew J. Wald, *Suit Against Auto Insurer Could Affect Nearly All Drivers*, N.Y. TIMES, Sept. 27, 1998, at A29.

Plaintiffs' lawyers are asking state courts to make national policy in another group of cases, the so-called "no-injury" class actions against carmakers in which a plaintiff

class seeks to recover on the basis of a purported defect that allegedly has the *potential* to cause injury. *See, e.g., Dalton v. Ford Motor Co.*, No. Civ.A 00C-09-155WCC, 2002 WL 338081 (Del. Super. Ct. Feb. 28, 2002). These lawsuits amount to nothing more than an invitation for state courts to override the judgments of the other States, as well as the regulations of the National Highway Traffic Safety Administration, and legislate motor vehicle safety and design standards on a national level.

The question presented by this and similar lawsuits is whether a state judge should be empowered to issue rulings that determine how companies may market and sell their products and services throughout the Nation. As the Senate Judiciary Committee has noted, "a system that allows State court judges to dictate national policy from the local courthouse steps is contrary to the intent of the Framers when they crafted our system of federalism." S. Rep. No. 106-420, at 20 (2000). To be sure, a *federal* court has no license to use the class-action mechanism to override the laws of the States, *see In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1302 (7th Cir. 1995) ("The diversity jurisdiction of the federal courts is, after *Erie*, designed merely to provide an alternative forum for the litigation of state-law claims, not an alternative system of substantive law for diversity cases."). But diversity jurisdiction was established to counter the dangers of local bias influencing the resolution of interstate disputes.

Consequently, to the extent that *any* judge may undertake to issue a nationwide injunction in a dispute between diverse parties, our system contemplates that it be a *federal* judge, who is nominated by the President and confirmed by the elected Senators from each State. Indeed, inherent in the Constitution's grant of diversity jurisdiction is the concept that federal judges will interpret and apply the laws of various States. And a nationwide class action—which could require a court sitting in Arizona to resolve the claims of a South Dakota resident against a Massachusetts-based company—is the quintessential example of a case that demands an often complex application of the laws of multiple States.

The availability of a federal forum also ensures that plaintiffs who seek a nationwide remedy do so pursuant to the federal procedural rules governing class actions and injunctions. *See* FED. R. CIV. P. 23, 65. Otherwise, a plaintiffs' lawyer could seek to certify a nationwide class in a State with comparably relaxed standards governing certification (or injunctions), and then leverage a ruling under those relaxed standards to control conduct throughout the Nation.

Moreover, federal courts are best suited to decide when federalism concerns make individual treatment of claims a preferable alternative to class treatment, and one that is more respectful of state autonomy. For example, in *In re Bridgestone/Firestone, Inc. Tires Products Liability Litigation*, Nos. 02-1437, 02-1438 & 02-1439, 2002 WL 831990, at *3 (7th Cir. May 2, 2002), the court decertified two nationwide classes, emphasizing that "[s]tate consumer-protection laws vary considerably, and courts must respect these differences rather than apply one state's law to sales in other states with different rules" (citing *BMW*, 517 U.S. at 568-73). The court added that "[d]ifferences across states may be costly for courts and litigants alike, but they are a fundamental aspect of our federal republic and must not be overridden in a quest to clear the queue in court." 2002 WL 831990, at *6.

In sum, it defeats the purpose of diversity jurisdiction to construe the diversity statute in a way that permits federal judges to hear slip-and-fall cases based on the mere theoretical *possibility* that the plaintiff could recover more than $75,000, while barring them from resolving disputes over how multibillion-dollar industries can conduct their business nationwide, even when the requested injunctive relief will, *to a legal certainty*, cost the defendant far more than the jurisdictional amount. Given the potential for national policy-making inherent in class action litigation where a nationwide injunction is requested, fundamental principles of federalism compel the conclusion that such cases be heard in federal court.

III. FEDERAL JURISDICTION IN CLASS ACTIONS THAT SEEK NATIONWIDE INJUNCTIONS IS SENSIBLE POLICY

It is sensible policy, and harmonizes with the purposes of diversity jurisdiction and the federal procedural rules governing class actions, to allow federal courts to hear class-action cases where the plaintiffs seek substantial nationwide injunctive relief. Such cases, small in number but large in significance, are best resolved by a federal court.

"Class actions differ from ordinary lawsuits in that the lawyers for the class, rather than the clients, have all the initiative and are close to being the real parties in interest." *Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust Co.*, 834 F.2d 677, 678 (7th Cir. 1987) (Posner, J.). Indeed, "[e]xperience teaches that it is counsel for the class representative, and not the named parties, who direct and manage these actions." *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1309 n.7 (3d Cir. 1993) (citation omitted).

One common tactic favored by the plaintiffs' class-action bar is the filing of the same lawsuit in different jurisdictions in the hope that one court will agree to certify a nationwide class. This tactic results in severe inefficiencies and potentially conflicting rulings. As explained in a recent memorandum to the federal Judicial Conference's Advisory Committee on Civil Rules:

> [S]trategic maneuvering by plaintiffs' attorneys often results in a proliferation of duplicative class action litigation in different jurisdictions. "As a result of competition among class action attorneys, defendants may find themselves litigating in multiple jurisdictions and venues concurrently, which drives transaction costs upward." Moreover, "[t]he availability of multiple fora dilutes judicial control over class action certification and settlement, as attorneys and parties who are unhappy with the outcome

in one jurisdiction move on to seek more favorable outcomes in another."

Memorandum to Advisory Comm. on Civil Rules from Judge Lee Rosenthal, Prof. Edward H. Cooper, and Prof. Richard Marcus (April 10, 2001), quoting Deborah R. Hensler *et al.*, *Class Action Dilemmas: Pursuing Public Goals for Private Gain* 15 (1999).

Especially in the context of class actions seeking the certification of a nationwide class—which often qualify as "universal venue" cases that can be filed anywhere in the country—there is a strong incentive to file multiple concurrent lawsuits in a host of different state courts. All it takes is finding a local resident.[3] Indeed, a Senate Judiciary Committee Report found that "another common abuse [of the class action device in state courts] is the filing of 'copy cat' class actions (*i.e.*, duplicative class actions asserting similar claims on behalf of the same people)." *See* S. Rep. No. 106-420, at 19 (2000).[4]

Federal courts, which have the ability to transfer and consolidate duplicative class actions before a single court,

[3] One plaintiffs' firm now offers a website that purports to "alert" potential clients to class-action litigation and invites members of the public to submit ideas for future class-action lawsuits. *See* www.ClassActionAmerica.com (promising that "Justice is now a click away!"). *See also* Don Oldenburg, *The Web's Class-Action Clearinghouse*, WASH. POST, April 24, 2002, at C14 (noting that website "[u]sers can also submit information online to an attorney for a free evaluation or to determine whether award money is due").

[4] The report goes on to note that "sometimes these duplicative actions are filed by lawyers who hope to wrest the potentially lucrative lead role away from the original lawyers, [and] in other instances, the 'copy cat' class actions are blatant forum shopping—the original class action lawyers file similar class actions before different courts in an effort to find a receptive judge who will rapidly certify a class." *Id.* A recent study confirms these findings. *See* John H. Beisner and Jessica Davidson Miller, *They're Making a Federal Case Out Of It . . . In State Court*, 25 HARV. J.L. & PUB. POL'Y 143 (2001) (identifying problems with state-court class actions).

see 28 U.S.C. § 1407 (providing for transfer and consolidation by the Judicial Panel on Multidistrict Litigation), can prevent this type of wasteful strategic maneuvering and foster uniformity in the law. Where class treatment is appropriate, defendants will not be forced to litigate the same nationwide claim in multiple States simultaneously, nor will a host of different state courts be forced to waste their resources unnecessarily examining and resolving identical issues.

In addition to conserving judicial resources, recognizing federal jurisdiction also prevents forum shopping. Plaintiffs' lawyers know that all they need is for a single judge to agree with their theory and the nationwide class is launched (and the settlement value of the case is increased exponentially). It is hardly surprising that certain state courts attract a stunningly disproportionate share of class-action filings, and have become magnets for class-action litigation. *See* H.R. Rep. No. 107-370, at 18 (2002) (noting that one Alabama state judge certified at least 35 cases for class treatment during 1996-1998, almost as many as were certified by all 900 federal trial court judges combined during calendar year 1997); Hensler, *Class Action Dilemmas*, Executive Summary at 7 (finding that "[c]onsumer class actions were more prevalent in Alabama than one would expect on the basis of population, and Louisiana led in the number and rate of mass tort class actions"); Marsha J. Rabiteau, *Abusive Class Actions: An Expanding Growth Industry*, National Legal Center for the Public Interest (2001), at 4 ("Plaintiffs' counsel locate magnet state courts not because they have a reputation of fairness to class members and defendants, but because certification of a class, no matter the merits, inevitably leads to settlement and enormous fees to class counsel.").[5]

The inevitable result of such careful forum shopping is that a small group of state court judges, handpicked by the

[5] *See also* Beisner and Miller, 25 HARV. J.L. & PUB. POL'Y at 160 (finding that three county courts in Illinois, Texas and Florida "have experienced a disproportionately high volume of class action filings, given their populations and general case docket size").

plaintiffs' class-action bar, ends up setting policy for businesses and consumers throughout the Nation. In fact, the subset of judges who regulate in this way is narrowed even further in that it is only those judges willing to certify the purported nationwide classes proffered by plaintiffs' lawyers who find themselves in a position to make national law. Recognizing federal jurisdiction in this type of large-scale, nationwide class action will thwart such attempts to forum shop and help preserve the integrity of each State's laws and policy choices.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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May 6, 2002

APPENDIX

3M

Allegiance Healthcare Corporation

Altec Industries

American Suzuki Motor Corporation

Andersen Corporation

Anheuser-Busch Companies

Ansell Healthcare, Inc.

Appleton Papers, Inc.

Aventis Pharmaceuticals Inc.

BASF Corporation

Baxter International, Inc.

Bayer Corporation

BIC Corporation

Biro Manufacturing Company Inc.

Black & Decker (U.S.) Inc.

BMW of North America, LLC

Bombardier Recreational Products

BP Amoco Corporation

Bridgestone/Firestone, Inc.

Briggs & Stratton Corporation

Bristol-Myers Squibb Company

Brown and Williamson Tobacco

Brown-Forman Corporation

Brunswick Corporation

C.R. Bard, Inc.

Caterpillar Inc.

Chevron Corporation

Compaq

Continental Tire North America, Inc.

Cooper Tire and Rubber Company

Coors Brewing Company

Crown Equipment Corporation

DaimlerChrysler Corporation

Dana Corporation

Deere & Company

E & J Gallo Winery

E.I. DuPont de Nemours and Company

Eaton Corporation

Eli Lilly and Company

Emerson Electric Co.

Engineered Controls International, Inc.

Estee Lauder Companies

ExxonMobil Corporation

FMC Corporation

Ford Motor Company

General Electric Company

General Motors Corporation

Georgia-Pacific Corporation

GlaxoSmithKline

Great Dane Limited Partnership

Guidant Corporation

Harley-Davidson Motor Company

Harsco Corporation, Gas & Fluid Control Group

Honda North America, Inc.

Hyundai Motor America

International Truck and Engine Corporation

Isuzu Motors America, Inc.

Johnson & Johnson

Johnson Controls, Inc.

Joy Global Inc.

Kawasaki Motors Corp., U.S.A.

Kia Motors America, Inc.

Kolcraft Enterprises, Inc.

Kraft Foods North America, Inc.

Lincoln Electric Holdings, Inc.

Mazda (North America), Inc.

Medtronic, Inc.

Mercedes-Benz of North America, Inc.

Michelin North America, Inc.

Miller Brewing Company

Mitsubishi Motors R & D of America, Inc.

Niro Inc.

Nissan North America, Inc.

Novartis Pharmaceuticals Corporation

Otis Elevator Company

PACCAR Inc.

Panasonic

Pentair, Inc.

Pfizer Inc.

Pharmacia Corporation

Philip Morris Companies Inc.

Polaris Industries, Inc.

Porsche Cars North America, Inc.

Raytheon Aircraft Company

Rheem Manufacturing

RJ Reynolds Tobacco Company

Schindler Elevator Corporation

SCM Group USA Inc.

Sears, Roebuck and Co.

Shell Oil Company

Siemens Corporation

Smith & Nephew, Inc.

Snap-on Incorporated

Sofamor Danek, Medtronic Inc.

Solutia Inc.

Sturm, Ruger & Company, Inc.

Subaru of America, Inc.

Sunbeam Corporation

Synthes (U.S.A.)

Textron Inc.

The Boeing Company

The Dow Chemical Company

The Goodyear Tire & Rubber Company

The Heil Company

The Procter & Gamble Company

The Raymond Corporation

The Sherwin-Williams Company

The Toro Company

Thomas Built Buses, Inc.

Toshiba America Incorporated

Toyota Motor Sales, USA, Inc.

TRW Inc.

UST (U.S. Tobacco)

Volkswagen of America, Inc.

Volvo Cars of North America, Inc.

Vulcan Materials Company

Water Bonnet Manufacturing, Inc.

Whirlpool Corporation

Wilbur-Ellis Company

Wyeth

Yamaha Motor Corporation, U.S.A.

Zimmer, Inc.